IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTIETH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

W.P. Nos. 9763 and 21133 of 2004

-

-

WRIT PETITION NO : 9763 of 2004

Between:

**I.V.V.Satyanarayana S/o Late I.Sriamulu, occu: Overseer
Engineering Sub-Division, A.G.College, Bapatla,
Guntur District**

..... PETITIONER

AND

**1 The Registar Acharya N.G.Ranga Agricultural University,
Administrative Office Rajendernagar , Hyderabad.**
**2 The Deputy Executive Engineer Engineering Sub-Division,
Agricutlural College Bapatla, Guntur District**
**3 The Govt. of A.P. rep. by its Secretary, Agrl. & Coop (Agr.III), Dept.,
Secretariat, Hyderabad. (R 3 is impleaded as per court order dt. 23-7-2004 in WPMP 13932 of 2004)**

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ order or direction more particularly one in the nature of writ of "Mandamus" declaring the Memo.No.13447/Ser.V(A3)/97 dt. 06/11/2002 issued by the 1st respondent in so far as petitioner is concerned as illegal, arbitrary, discriminatory and contrary to Article 14 of the Constitution of India and set aside the

same in so far as the petitioner is concerned and consequently direct the respondent to continue the petitioner till he attain the age of 60 years with all consequential benefits attached to the post in the interest of justice.

Counsel for the Petitioner: MR.M.RATNA REDDY

Counsel for the Respondent Nos. 1 and 2 : MR.B.SIVA REDDY

Counsel for the respondent No.3: G.P. for Agriculture.

WRIT PETITION NO : 21133 of 2004

Between:

M. Nagabhushanam, S/o. Suryanarayana, occu: Deputy Executive Engineer, O/o. Engineering division, Agricultural University, Tirupathi.

..... PETITIONER

AND

1 **The Government of Andhra Pradesh, Rep. by its Secretary, Agricultural & Co-operation (Agr.III) Department, Secretariat, Hyderabad.**
2 **The Registrar, Acharya N.G. Ranga Agricultural University, Rajendranagar, Hyderabad.**

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue Writ order or direction more particularly one in the nature of Writ of "Mandamus" declaring the resolution No.7116 dated 28-04-2003 of Acharya N.G. Ranga Agricultural University, Hyderabad and the consequential G.O.Ms.No.256 Agrl. & Coop (Agrl.III) Department dated 29-09-2003 issued basing on the said resolution to the effect of omitting the proviso to statute-9 of the Act XXIV of 1963 and consequential Proc.No.1004/S.C/A1/04 dated 23-06-2004 as illegal, null and void irregular and opposed to the principles of natural justice and violation of Article 14 of the Constitution of India and consequently set aside the order of the University issued in Memo.No. 24232/OP/A4/04 dated 02-07-2004 in the interest of justice and further declare that the petitioner is entitled to continue up to the age of 60 years as per the similarly placed person, and direct the respondents to continue the petitioner till he attains the age of 60 years with all consequential benefits

Counsel for the Petitioner: MR.M.RATNA REDDY

Counsel for the Respondent No.1: GP FOR AGRICULTURE

Counsel for the Respondent No.2: Mr. B. Siva Reddy

The Court at the admission stage made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. Nos. 9763 and 21133 of 2004

COMMON ORDER**:**

Since the common question of law is involved in these two writ petitions, they are being disposed of by a common order.

The brief facts that are necessary for the disposal of W.P. 21133 of 2004 may be stated as follows:

The petitioner in this case was appointed as Overseer in Engineering Sub-Division of 2nd respondent on 12.7.1971. Thereafter he was promoted as Supervisor in the year 1973. He was promoted as Assistant Engineer in the year 1972 and as Deputy Executive Engineer in the year 1999. According to the petitioner he is entitled to work up to the age of completion of 60 years as he is a technically qualified employee. According to him, the services of the petitioner are governed only by the provisions of the A.P. Agricultural Universities Act 1963 as it stood at the time of joining into service but not any subsequent amendment which caused injustice to his service. He further stated that omitting the proviso to statute 9 of the additional statute and the G.O.Ms.No.256 dated 29.9.2003 are bad in law. Some of the staff members of the University were continued till they attain 60 years where he was deprived of the same privilege by the impugned amendment G.O. and the consequential order dated 2.7.2004. Hence the present writ petition.

A counter affidavit has been filed stating that the proviso to Statute 9 of the Additional Statute was deleted w.e.f. 29.9.2003, therefore the petitioner cannot take shelter under the above proviso. As per the proceedings dated 23.6.2004 the proviso is no more in force. The amendment was made with the prior approval of the

Government and the Board of Management. Hence, in view of the earlier amendment deleting the words “Technically qualified employees” under Regulation 33 of conditions of service and the present amendment deleting the proviso to Statute 9 of the Additional Statutes, the petitioner cannot be continued beyond 58 years. Hence the respondents pray to dismiss the writ petition.

The brief facts that are necessary for the disposal of W.P.9763 of 2004 may be stated as follows:

The petitioner in this case was appointed as temporary Mokaddam (Technical) on 29.8.1967. He was promoted as Overseer on 17.10.1978 and he is working as Overseer at Bapatla. According to the petitioner, as per Regulation 33(a) (unamendeed) which is in force at the time of his initial appointment, all the technically qualified persons in the University are entitled to continue up to the age of 60 years. The said Regulation was amended after his appointment in the year 1978. Thereafter the 1st respondent issued a Memo dated 6.11.2002 seeking to retire the petitioner on 31.6.2004 on attaining the age of 58 years. According to him, the Regulation applicable to him at the time of his initial appointment shall only be binding on the University and any subsequent amendment to the said Regulation will not have any effect on his service conditions. According to the petitioner, some of the employees were continued up to the age of 60 years by virtue of the orders of this court and he is similarly placed. Hence the writ petition.

The 1st respondent filed the counter affidavit similar to that of the counter filed in W.P. 21133 of 2004. Therefore, it is redundant to repeat the same.

Learned counsel for the petitioners in both the writ petitions contended that both the writ petitioners have joined in service of the 1st respondent prior to 27.4.1976 on which date Regulation 33 was amended; therefore the unamended Regulation 33 of the 1st respondent would be applicable. If that is taken into

consideration, the petitioners being the technically qualified employees of the 1st respondent shall be liable for retirement on attaining the age of 60 years. For that proposition he placed reliance on the judgments of this court in W.Ps. 2633 of 1993 and 4572 of 1998. He further contended that the deletion of Statute 9 of the Additional Statute which came into force w.e.f. 29.9.2003 has no application to the service conditions of the petitioners and the said deletion has no retrospective effect and hence he prays to set aside the impugned proceedings.

On the other hand, learned counsel for the respondents contended that in view of deletion of the proviso to Statute 9 of the Additional Statute which came into force from 29.9.1993, the petitioners have to retire at the age of 58 years and the judgments relied upon by the learned counsel for the petitioners have no relevance and there are no grounds to interfere with the impugned proceedings.

Learned counsel for the petitioners relied upon some decisions with regard to superannuation. The factual matrix is not in dispute. The petitioner in W.P. 9763 of 2004 was initially appointed as temporary Mokaddam on 29.8.1967. Thereafter he was posted as Assistant Storekeeper (Technical) on 16.8.1969. Whereas, the petitioner in W.P. 21133 of 2004 was appointed as Overseer on 14.7.1971. He was promoted as Supervisor by proceedings dated 26.9.1973. Regulation No.33 of the A.P. Agricultural University (Conditions of Service) Regulations, 1965 (for short, 'Regulations, 1965') as it stood prior to the amendment during 1976 reads as follows:

Retirement and Extension:

a. The age of retirement for teachers and other technically qualified employees shall be 60 years provided that it shall be competent for the appointing authority to

review the case of any teacher or technically qualified employee at any time after he attains the age of 55 years and retire him, without assigning any reason, giving three months notice.

b. The age of retirement of the employees other than those mentioned in clause (a) shall be 55 years provided that the appointing authority may for good and sufficient reasons extend the service of any employee till he attains the age of 60 years".

c.

The said Regulation was amended vide proceedings No.598/stat/76 dated 27.4.1976 deleting the words "technically qualified employees". So, after amendment the retirement age of 60 years would only be applicable to the teaching staff and also Class-IV employees of the 1st respondent. The effect of amendment of the said Regulation is the subject matter of W.P. 2633 of 1993 dated 15.6.1994 wherein it is held:

> "However, since the petitioner was promoted as Deputy Executive Engineer, the proviso to Statute No.9 is not applicable. I am unable to agree with the contention of the counsel for the respondents. When once a person is appointed to a service of the University, his conditions of service are governed by the regulations as applicable to his service at the time of his appointment. During the course of employment, if an employee was promoted to a higher post, he does not cease to be a member of the service to which he was recruited and continues to belong to the

> same service, unless the post to which he was promoted constitute a different service. It is not the case of the respondents that the post of Deputy Executive Engineer, to which the petitioner was promoted, constitute a different service. Therefore, as long as the petitioner continues to be in the same service to which he was recruited, the regulations governing his conditions of service alone are applicable. In view of the proviso to statute No.9, any amendment made to the regulations, varying the conditions of service to the disadvantage of the employees of a service of the University, cannot be made applicable to them who were appointed to such service".

Learned counsel for the petitioners also placed reliance on a decision of this court in W.P. 4572 of 1998 dated 25.3.1998 wherein it is held:

> "If the petitioner in the said writ petition was not covered by Regulation 33 of the Regulations, the University could not have stated that the petitioner was entitled to be continued in service up to 60 years. The university also did not invoke the doctrine of ejusdem generis for obvious reasons. The learned single Judge also considered other aspects with regard to the amendment subsequently brought to Regulation 33 of the Regulations and the protection clause under Statute No.9 and held that the petitioner is entitled to be continued in service up to the age of 60 years. The petitioner in this case also falls in the same category of service".

These two decisions were rendered prior to the deletion of Statute 9 of Additional Statute, which reads as follows:

"provided that the conditions of service shall not be varied to their disadvantage after their appointment"

Therefore, those two decisions were rendered placing reliance on the protection clause under Statute 9. If the protection clause under Statute 9 remains on the statute book, then there would not be any difficulty for this court to follow the abovementioned judgments rendered by this court. The Government of Andhra Pradesh deleted the above proviso by virtue of G.O.Ms.No.256 Agriculture & Cooperation (Agrl.III) Department dated 29.9.2003. The said G.O. came into force w.e.f. 29.9.2003. The petitioner in W.P. 9763 of 2004 was retired on 31.6.2004 whereas the petitioner in W.P. 21133 of 2004 was retired from service on 30.11.2004. There is no dispute that if the proviso to Statute 9 of the Additional Statute is not there, the petitioners will have to be retired on their respective dates on attaining the age of superannuation of 58 years. So, basing on this proviso it is vehemently contended that the service conditions governing the services of the petitioners shall not be varied to their disadvantage after their appointment and they have to be continued up to the age of 60 years. The deletion of proviso to Statute 9 of Additional Statute admittedly came into force w.e.f. 29.9.2003. As on the respective dates of retirement of the petitioners on attaining the age of 58 years, the proviso to Statute 9 of Additional Statute is not available in the statute book. If this proviso is not available by the date of their retirement on attaining the age of 58 years, it is completely in accordance with Regulation 33 of the Regulations, 1965. In my considered opinion, the G.O.Ms.No.256 Agriculture & Coperation (Agrl.III) Department dated 29.9.2003 issued by the Government of Andhra Pradesh would only be applicable to the employees prospectively. If that is taken into consideration, issuing the impugned proceedings requiring the petitioners to retire from the dates as mentioned in these two proceedings cannot be said to be contrary to the service conditions governing the services of the petitioners as on the date of retirement. Though it is stated in one of the writ petitions that the said G.O. is bad in law, irregular and

opposed to the principles of natural justice, it is not stated in the affidavit as to how the said G.O. deleting the proviso to Statute 9 of the Additional Statute is bad in law, irregular and opposed to principles of natural justice. If that is the case, the age of retirement as per Regulation 33 of the Regulations 1965 is 58 years, other than the teachers and the Class-IV employees. Therefore, a Mandamus cannot be issued to the respondents to act contrary to the Regulations thereby directing them to continue the petitioners up to the age of 60 years.

Learned counsel for the petitioners relied upon a decision in **Raj Soni v. Air Officer i/c. Admn**, which has no application to the present facts of the case because the age of superannuation under the Delhi Education Code is 60 years. He further relied upon a decision in **B.P. Singh v. Director General, Ordinance Factory**, which has also no application because in this case also the age of superannuation is 60 years. The learned counsel for the petitioners relied upon several other decisions, namely, **State of Rajasthan v. R. Dayal**, **Y.V. Rangaiah v. Sreenivasa Rao**, **Osmania University v. V.S. Muthurangam** and **Hari Shankar gaur v. Delhi Transport Corporation**, which have no application to the present facts of the case.

In view of the above, both the writ petitions are devoid of merit and they are accordingly dismissed.

_____

K.C. Bhanu, J.

Date: --01—2005.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 **The Registar Acharya N.G.Ranga Agricultural University, Administrative Office Rajendernagar , Hyderabad.**
2 **The Deputy Executive Engineer Engineering Sub-Division, Agricutlural College Bapatla, Guntur District**
3 **The Secretary, Agrl. & Coop (Agr.lll), Dept.,Govt. of A.P. Secretariat, Hyderabad.**

4. Two C.C to the Government Pleader for Agriculture, High Court Buildings, Hyderabad, (OUT).

5. 2CD copies